



Department of Justice

STATEMENT

OF

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CONCERNING

PROTECTING CHILDREN ON THE INTERNET

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Mr. Chairman, Senator Inouye, and distinguished Members of the Committee, thank you for inviting me to testify before you today about the Department of Justice's enforcement efforts against sexually explicit material available on the Internet. From a criminal law perspective, our jurisdiction is predominantly focused on child pornography and obscene material. While we recognize that the Internet is an amazing medium for the dissemination of ideas and information and can deeply enrich our lives, we also know that it can be exploited for criminal activity and can cause grave harm, including by facilitating child pornography and obscenity crimes, as well as making sexually explicit material available to children. Accordingly, the Department of Justice is unequivocally committed to enforcing federal laws in these areas.

Child Pornography

Let me first address child pornography, which the Supreme Court has ruled carries no First Amendment protection. *See New York v. Ferber*, 458 U.S. 747 (1982). Federal law, codified at Chapter 110 of Title 18, United States Code, prohibits all aspects of the child pornography trade, including its production, receipt, transportation, distribution, advertising, and possession.

Unfortunately, the very term we commonly use to describe these awful images – child pornography – does not adequately convey the horrors these images depict. A more accurate term would be “images of child sexual abuse,” because the production of these images involves the sexual abuse of a child. These images are thus permanent visual records of child sexual abuse. In the past several years, the children we have seen in these images have been younger and younger, and, very regrettably, the abuse depicted has been increasingly more severe and is often sadistic.

As if the images themselves were not harmful enough, the sexual abuse inherent in child pornography is increasingly exacerbated by pedophiles who choose to disseminate these images to millions of people over the Internet with a few clicks of a computer mouse. Once on the Internet, the images are passed endlessly from offender to offender and perhaps used to whet the appetite of another pedophile to act out the deviant fantasies of the image on yet another child, thereby continuing the cycle of abuse. The Department of Justice is absolutely committed to obliterating this intolerable evil.

Because child pornographers continue to find ways to employ the ever-evolving technology of the Internet and computers to commit their deviant crimes, we in law enforcement must respond to these technological advances in order effectively to combat these crimes. In order to ensure our ability to do so, the Criminal Division created the High Tech Investigative Unit (HTIU) within the Child Exploitation and Obscenity Section (CEOS) in August 2002. The HTIU consists of computer forensic specialists who team with expert prosecutors to ensure the Department of Justice's capacity and capability to prosecute the most complex and advanced offenses against children committed online. HTIU computer forensic specialists render expert forensic assistance and testimony in districts across the country in the most complex child pornography prosecutions conducted by the Department. Additionally, the HTIU currently receives and reviews hundreds of tips per month from citizens and non-governmental organizations, such as the National Center for Missing and Exploited Children, and initiates investigations from these tips.

Child pornography is distributed over the Internet in a variety of ways, including: online groups or communities, file servers, Internet Relay Chat, e-mail, peer-to-peer networks, and web

sites. The Department of Justice investigates and prosecutes offenses involving each of these technologies. Sophisticated investigative techniques, often involving undercover operations, are required to hold these offenders accountable for their crimes. For example, an investigation of a commercial child pornography web site requires us not only to determine where the servers hosting the web site are located and who are the persons responsible for operating the web site, but also to follow the path of the financial transactions offenders use to purchase the child pornography, whether by credit card or other means. Such cases require detailed information about all aspects of the transaction in order to determine the identity and location of the offenders. Additionally, many of these cases require coordination with law enforcement from other countries. It is essential that these complex cases be handled by law enforcement agents and prosecutors with the necessary specialized expertise.

The Department of Justice works continuously to identify the vulnerabilities of the child pornography industry and to attack them at every angle, both domestically and overseas. We are focusing our efforts on everyone, from the customer, to the website operator, to the facilitators – including those who provide credit card processing and subscription services. A concrete reflection of our intensified efforts is the fact that CEOS already has generated a more than 445% increase in its caseload, including child pornography cases and investigations, handled in the past four years. In addition to increasing the sheer number of investigations and prosecutions brought by these attorneys, the quality and import of the cases has increased substantially, with a focus on the producers and commercial distributors of the material.

The 94 U.S. Attorneys' Offices are critical to the efforts to enforce federal laws prohibiting crimes against children, prosecuting large numbers of cases. Total federal

prosecutions of child pornography cases rose from 352 cases in 1997 to 1,486 cases in 2004, a more than 422% increase. Federal prosecutions of enticement and sexual abuse cases more than doubled in this same time frame, jumping from 230 in 1997 to 518 in 2004. In Fiscal Year 2005, U.S. Attorneys' Offices initiated 1,447 cases pursuant to child exploitation and child pornography statutes. The number of federal investigations of crimes against children continues to increase at an exponential rate. Arrests made under the FBI's Innocent Images national initiative to target child pornography and child enticement jumped 1,015 percent between 1996 and 2003 nationally, suggesting that the number of federal prosecutions of these offenders is likely to continue to rise significantly.

Moreover, CEOS enhances federal law enforcement's fight against child pornography by disseminating its specialized expertise to the field. CEOS conducts advanced training seminars on the investigation and prosecution of child exploitation cases attended by Assistant United States Attorneys and federal law enforcement agents from all over the country. CEOS also provides critical expert assistance to the field in a variety of other ways. CEOS attorneys are on call to answer questions from prosecutors in the field about how best to investigate or prosecute their cases. CEOS also keeps field agents and prosecutors abreast of current legal and technological developments through such mechanisms as its quarterly newsletter. Most importantly, CEOS' expert resources are widely employed by the United States Attorneys' Offices to resolve the most difficult issues presented in child exploitation cases and to ensure a successful prosecution.

CEOS is currently coordinating 16 multi-district operations involving child pornography offenders. These investigations of national impact have the potential for maximum deterrent

effect on offenders. Nearly each one of the sixteen investigations involves hundreds or thousands, and in a few cases tens of thousands, of offenders. The coordination of these operations is complex, but the results can be tremendous. By way of example, the Federal Bureau of Investigation (FBI) is currently investigating the distribution of child pornography on various Yahoo! Groups, which are “member-only” online bulletin boards. The most recent report from the FBI indicates that the investigation has yielded 180 search warrants, 75 arrests, 130 indictments, and over 60 convictions.

The Department of Justice is also working to identify and rescue victims depicted in images of child pornography. One method for achieving this goal is already underway. The FBI Endangered Child Alert Program (ECAP) was launched on February 21, 2004, by the FBI’s Innocent Images Unit, and is conducted in partnership with CEOS. The purpose of ECAP is proactively to identify unknown offenders depicted in images of child pornography engaging in the sexual exploitation of children. Since ECAP’s inception, seven of these “John Doe” subjects have been profiled by *America’s Most Wanted*, and with the assistance of tips from viewers, six have been identified. More importantly, 35 victims (so far) in Indiana, Montana, Texas, Colorado, and Canada have been identified as a result of this initiative. All of the victims had been sexually abused over a period of years, some since infancy. CEOS will continue to ensure that this program is utilized to its maximum potential.

The Department recently has had substantial success in destroying several major child pornography operations. Two examples are *United States v. Mariscal* (S.D. Fla.) and *Regpay/Operation Falcon* (D.N.J.). In *Mariscal*, Angel Mariscal received a 100-year prison sentence on September 30, 2004 in the Southern District of Florida, after being convicted on

seven charges including conspiracy to produce, importation, distribution, advertising, and possession with intent to sell child pornography. Mariscal traveled repeatedly over a seven-year period to Cuba and Ecuador, where he produced and manufactured child pornography, including videotapes of Mariscal sexually abusing minors, some under the age of 12. As a result of Mariscal's arrest, his customers across the country were targeted in Operation Lost Innocence, which was coordinated by the U.S. Postal Inspection Service and CEOS. To date, Lost Innocence has resulted in 107 searches, 55 arrests/indictments, and 44 convictions.

United States v. Zalatarou (D.N.J.) (*Regpay*), which led to *Operation Falcon*, is an example of how one child pornography investigation can lead to the apprehension of many other offenders. Regpay was a Belarus-based company that provided credit card processing services to hundreds of commercial child pornography websites. Regpay contracted with a Florida company, Connections USA, to access a merchant bank in the United States. In February 2005, several Regpay defendants pled guilty to various conspiracy, child pornography, and money laundering offenses in the District of New Jersey. Connections USA and several of its employees also pled guilty in connection with this case. The Regpay investigation spawned the U.S. Immigration and Customs Enforcement's Operation Falcon, an international child pornography trafficking investigation that so far has resulted in 448 open investigations, 130 search warrants in the U.S., 191 domestic and approximately 767 foreign arrests (in Australia, Denmark, Finland, Hong Kong, Liechtenstein, Netherlands, Norway, Scotland, Sweden, Switzerland, and the United Kingdom), and 47 domestic indictments, generating 14 convictions.

Obscenity

The other major component of the Department's enforcement efforts against sexually explicit material on the Internet is our obscenity enforcement program. Federal law, codified at Chapter 71 of Title 18, United States Code, prohibits a variety of activities related to obscene material. Provisions which particularly apply to the Internet are those which prohibit transporting obscene material in interstate or foreign commerce using an interactive computer service, transporting obscene material in such a manner for sale or distribution, or knowingly transferring obscene material to a person under the age of 16 using any facility or means of interstate or foreign commerce. The Department of Justice also enforces the Truth in Domain Names statute, Section 2252B of Title 18, which prohibits using a misleading domain name to cause persons to view obscene material or to cause minors to view material harmful to them.

Underlying all federal obscenity statutes is the obscenity test set forth in the Supreme Court's opinion in *Miller v. California*, 413 U.S. 15 (1973). Under *Miller*, obscene material does not enjoy First Amendment protection. Accordingly, the complexities in obscenity law arise not in determining whether traffic in obscene material can constitutionally be prohibited, but rather in determining what is obscene. *Miller* provides a three-part test used to make this determination. The first part is that the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest. The second part is that the material depicts or describes hard-core sexual conduct in a patently offensive way. The third part is that the material, taken as a whole, lacks serious literary, artistic, political, or scientific value. If any of these three parts is not met, the material cannot be considered obscene under *Miller*.

Given the *Miller* test, in pursuing obscenity prosecutions we proceed on the premise that all hard-core pornography is potentially obscene and judge each potential prosecution individually on its own merits. Since community standards play a key role in applying the *Miller* test, in our approach we take care to consider the views of the local community as we make these prosecution decisions. Typically, Criminal Division prosecutors ensure that they take local community views into account by teaming with prosecutors from the United States Attorney's Office on these cases. As local federal prosecutors are familiar with the standards of their own communities, this team approach ensures that we properly apply the *Miller* test when evaluating potential obscenity cases for possible prosecution.

Despite recent challenges to the constitutionality of the obscenity statutes, these statutes continue to be constitutionally sound. In its recent opinion in *United States v. Extreme Associates*, 431 F.3d 150 (3d Cir. 2005), the Third Circuit Court of Appeals reaffirmed the vitality of these statutes by rejecting a defense claim that federal obscenity statutes violate the due process clause of the Sixth Amendment. In its ruling, the Third Circuit rejected the defense's argument that the Supreme Court's opinion in *Lawrence v. Texas*, 539 U.S. 558 (2003), created a substantive due process right to protect commercial distribution of obscene material, stating that "Congress may prevent interstate commerce and the channels thereof from being used to spread evil of a physical, moral or economic nature." We believe the Third Circuit's opinion will make it unlikely that other obscenity defendants will be able successfully to attack the constitutionality of federal obscenity statutes.

Like so many other commodities, the distribution of obscenity has significantly migrated to the Internet. The obscenity industry has a widespread presence on the Internet, and over the

last several years, online obscenity offenses have substantially increased, if not exploded. The Internet has encouraged growth on both the supply and demand sides of the obscenity market. It has greatly eased offenders' task of offering and distributing obscene material, while it has also made it much easier for those who want to view such material to obtain it. Moreover, offenders extensively use "spam" and other such invasive means to advertise their material. Perhaps because obscenity is now so widespread, there is a trend among offenders to differentiate themselves from other suppliers by offering more and more extreme material. Obscenity offenders essentially are now competing to offer the most egregious material in hopes of selling material to consumers who seek the most shocking items. This is an alarming trend that we are working hard to curtail.

Another significant effect of the migration of obscenity to the Internet, and perhaps the most disturbing, is the endangerment of children. This is especially true when spam is used to market obscene material. To give you a sense of the problem, from September 1, 2002, through December 11, 2005, the National Center for Missing and Exploited Children reported 2,317 tips of unsolicited obscene material sent to a child. Every one of these tips alleged that a child was actually exposed to unsolicited obscene material via the Internet.

In response to the explosive increase in obscenity offenses and as part of this Administration's firm commitment to enforce the Nation's obscenity laws, over the past five years the Department of Justice has revived and significantly enhanced its obscenity enforcement program. Specifically, there have been 47 obscenity convictions of persons or entities Department-wide since 2001, and we currently have obscenity indictments pending against 12 persons or entities. CEOS has led the Department's efforts in this area, prosecuting high-impact

obscenity offenders and businesses using Internet web sites to distribute obscenity with the inherent capacity to afford widespread access to the public. As explained above, given the importance of community standards under the *Miller* test, CEOS has pursued these cases working in conjunction with U.S. Attorneys' Offices.

Moreover, in order to further enhance our obscenity enforcement efforts, just last year the Department of Justice established the Obscenity Prosecution Task Force within the Criminal Division. The Task Force focuses exclusively on obscenity prosecution, thereby supplementing the ongoing obscenity work being done in CEOS and in U.S. Attorneys' Offices around the country. The Task Force is positioned to draw upon the specialized expertise of Criminal Division attorneys in the Organized Crime and Racketeering Section, the Asset Forfeiture and Money Laundering Section, and the Computer Crime and Intellectual Property Section, whose skills and expertise are often pertinent to obscenity prosecutions. The Task Force is working with U.S. Attorneys' Offices across the country to develop effective obscenity prosecutions and has partnered with a Postal Inspector, assigned full-time to work with the Task Force, and a team of agents from the FBI devoted solely to making cases against national-scale obscenity distributors.

Two major cases in recent years that provide excellent insight into the Department's commitment to obscenity enforcement are *United States v. Coil* (W.D. Tex.) and *United States v. Wedelstedt* (N.D. Tex.). In *Coil*, CEOS partnered with the U.S. Attorney's Office for the Western District of Texas in the investigation and prosecution of a major supplier of adult-oriented materials. Seven individuals were charged in a multi-count indictment with fraud, tax, obscenity, and conspiracy offenses related to the operations of adult-oriented businesses in three

states. All seven defendants have pled guilty, and significant criminal penalties were imposed. The lead defendant, John Kenneth Coil, agreed to forfeit all his enterprise properties within the state of Texas, amounting to over 40 pieces of realty and 20 stores throughout the state. He was sentenced to 63 months imprisonment to be followed by three years of supervised release, a \$5,000 fine, and forfeiture of an estimated \$8.1 million in property.

In the *Wedelstedt* case, being prosecuted by CEOS and the U.S. Attorney's Office for the Northern District of Texas in substantial cooperation with the Tax Division, the Criminal Division's Asset Forfeiture and Money Laundering Section and Organized Crime and Racketeering Section, the Internal Revenue Service, and the Bureau of Immigration and Customs Enforcement, seven individuals and a company were indicted on March 11, 2005 for numerous crimes including racketeering, conspiracy, obscenity, and tax offenses. The indictment addressed the criminal activities of Edward J. Wedelstedt and his wholly-owned, multi-million dollar corporation, called Goalie Entertainment Holdings, Inc., related to the operation throughout the country of adult pornography bookstores with video arcades where customers could pay to view clips of obscene videos or DVDs. Several convictions have already resulted from this indictment, including that of lead defendant Wedelstedt, who pled guilty on November 4, 2005, to transporting obscene matters for sale or distribution (in violation of 18 U.S.C. § 1465) and engaging in a conspiracy to defraud the United States by frustrating, impeding, or hindering the Internal Revenue Service (in violation of 18 U.S.C. § 371). Wedelstedt's plea subjects him to a 13-month prison sentence to be followed by one year of supervised release. Wedelstedt will also face forfeiture of businesses and property located in Texas. Further, Wedelstedt has already forfeited \$1.25 million to the United States government in connection with this investigation.

Wedelstedt is scheduled to be sentenced on February 9, 2006.

Additional Legislative Tools That Would Assist Our Efforts in These Areas

In closing, I'd like to note that the Department of Justice has developed several legislative proposals for Congressional action to improve prosecutors' ability to crack down on obscenity and sexual exploitation of children. Several of these proposals were included in Title VIII of H.R. 3132, which passed the House of Representatives last fall. Our proposals would establish the nexus to interstate commerce in child pornography cases, broaden the obscenity statutes to cover the production of obscenity, and enhance our ability to attack the financial assets of purveyors of such material. The proposals would also strengthen the federal government's ability to prevent children from being used in pornography by enhancing the current statutory scheme of identity checks and recordkeeping in Section 2257 of Title 18, United States Code. Additionally, one of our proposals not contained in H.R. 3132 would allow us to use administrative subpoenas in obscenity investigations, as is authorized for child pornography cases. The enactment of these provisions would significantly assist our enforcement efforts in these critical areas. We are also grateful to Senators Hatch and Brownback for recently introducing S. 2140, which includes several of the reforms contained in the House-passed bill to strengthen the age-related recordkeeping requirements imposed on producers of sexually explicit material, thereby bolstering prosecutors' ability to pursue cases involving the exploitation of minors by this industry.

Conclusion

In these brief comments, I hope to have given you a sense of the Department of Justice's efforts to enforce federal criminal laws concerning sexually explicit material available on the

Internet. We consider this a critically important task and will continue to do our utmost to protect children as well as society at large by enforcing these statutes.

Mr. Chairman, I again thank you and the Committee for the opportunity to speak to you today, and I would be pleased to answer any questions the Committee might have.